

#37660

DSS

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

DOCKET NO. _____

THE GIVING BACK FUND, INC.,)
)
Plaintiff,)
)
v.)
)
)
MARK STEVERSON, RUDOLPH &)
BEER, LLP., LAURENCE H. RUDOLPH)
and CORINA BIGGAR,)
)
)
Defendants.)

02 CV 10446 RWZ

NOTICE OF REMOVAL

To The Honorable Judges of said Court.

Defendants, Mark Steverson, Rudolph & Beer, LLP, Laurence H. Ruldolph and Corina Biggar by its attorneys, Peabody & Arnold, LLP, pursuant to 28 U.S.C. §§ 1332, 1441 and 1446 hereby file this Notice of Removal of the case of *The Giving Back Fund, Inc. v. Steverson, et als*, Suffolk Superior Court, C.A. No. 02-0749 and respectfully assert the following:

1. Mark Steverson, Rudolph & Beer, LLP, Laurence H. Ruldolph and Corina Biggar (collectively, the "defendants") are the only named defendants in the above entitled civil action which was filed by plaintiff, The Giving Back Fund, Inc. ("GBF") in the Superior Court of the Commonwealth of Massachusetts, Suffolk County, Index No. 02-0749, on or about February 19, 2002. GBF purports to have served the Summons and Complaint in the above-entitled action, copies of which are annexed hereto as Exhibit "A," upon defendants on February 19, 2002 by mail. No further proceedings have been had in this action.

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2. This notice is timely filed, as required by 28 U.S.C. § 1446(b), within thirty days after receipt of the initial pleadings setting forth the claim for relief upon which such proceeding is based.

3. This Court has jurisdiction over the above entitled action as follows:

a. Pursuant to 28 U.S.C. § 1332(a) on the grounds that plaintiff asserts that it is a charitable corporation organized pursuant to the laws of the State of Massachusetts with its office and principal place of business in Boston, Massachusetts, all of the defendants are citizens of other states and the amount in controversy exceeds \$75,000; and

b. Pursuant to 28 U.S.C. § 1331 on the ground that it asserts a federal question, to wit, a violation of 15 U.S.C. § 1125(a). (Count XI of the Complaint).

4. Accordingly, the above entitled action may be removed to the Court pursuant to 28 U.S.C. §§ 1441 and 1446.

5. Defendants remove the State Court action to this Court without waiver of any defenses, procedural or substantive, that may be available;

6. No change of citizenship of parties has occurred since the commencement of the action.

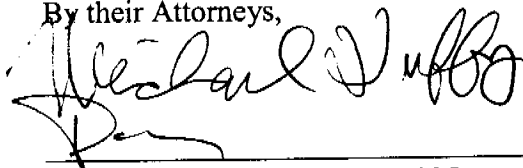
7. A copy of this Notice of Removal is being filed with the Clerk of the Suffolk Superior Court, as required by 28 U.S.C. § 1446(d).

WHEREFORE, defendants respectfully request that this Court assume full jurisdiction of this cause as if it had been originally filed here and that further proceedings in the State Court action be stayed.

Respectfully submitted:

MARK STEVERSON, RUDOLPH & BEER, LLP,
LAURENCE H. RUDOLF and
CORINA BIGAR,

By their Attorneys,



Michael P. Duffy, BBO #137325
Paul T. Muniz, BBO #564786
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CERTIFICATE OF SERVICE

I hereby certify that I mailed a true and accurate copy of the within to David S. Rosenthal, Hutchins, Wheeler & Dittmar, 101 Federal Street, Boston, Massachusetts 02110, attorney of record for the plaintiff.

March 13, 2002

